

Subpart E—Implementation by Governmental Entities

581.501 Rules, regulations, and directives by governmental entities.

APPENDIX A TO PART 581—LIST OF AGENTS DESIGNATED TO ACCEPT LEGAL PROCESS

APPENDIX B TO PART 581—LIST OF AGENTS DESIGNATED TO FACILITATE THE SERVICE OF LEGAL PROCESS ON FEDERAL EMPLOYEES

AUTHORITY: 15 U.S.C. 1673; 42 U.S.C. 659, 661-662; E.O. 12105, 43 FR 59465, 3 CFR, 1979 Comp., p. 262; E.O. 12953, 60 FR 11013.

SOURCE: 45 FR 85667, Dec. 30, 1980, unless otherwise noted.

Subpart A—Purpose and Definitions

§ 581.101 Purpose.

Section 659 of title 42 of the United States Code, as amended, provides that moneys, the entitlement to which is based upon remuneration for employment, due from, or payable by, the United States or the District of Columbia to any individual, shall be subject, as if the United States or the District of Columbia were a private person, to legal process brought for the enforcement of such individual's legal obligations to provide child support and/or make alimony payments. Section 666 (a)(1) and (b) of title 42 of the United States Code requires States to enact laws mandating the use of procedures for the withholding from income of amounts payable as support. The purpose of this part is to implement the objectives of sections 659 and 666 (a)(1) and (b) as they pertain to the executive branch of the Government of the United States.

[55 FR 1355, Jan. 16, 1990]

§ 581.102 Definitions.

In this part: (a) *The executive branch of the Government of the United States* means all "governmental entities" as defined in this section, including therein the territories and possessions of the United States, the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, and the government of the District of Columbia.

(b) *Governmental entity* means each department, both civilian and military, agency, independent establishment, or instrumentality of the executive branch, including the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, any office, commission, bureau, or other administrative subdivision or creature of the executive branch, and the governments of the District of Columbia and of the territories and possessions of the United States.

(c) *Private person* means a person who does not have sovereign or other special immunity or privilege which causes that person not be subject to legal process.

(d) *Child support* means periodic payments of funds for the support and maintenance of a child or children, and, subject to and in accordance with State or local law, includes, but is not limited to, payments to provide for health care, education, recreation, clothing, or to meet other specific needs of such a child or children. Child support also includes attorney's fees, interest, and court costs, but only if these items are expressly made recoverable as child support under a decree, order, or judgment issued in accordance with applicable State or local law by a court of competent jurisdiction.

(e) *Alimony* means periodic payments of funds for the support and maintenance of a spouse or former spouse, and, subject to and in accordance with State or local law, includes, but is not limited to, separate maintenance, alimony pendente lite, maintenance, and spousal support. Alimony also includes attorney's fees, interest, and court costs, but only if these items are expressly made recoverable as alimony under a decree, order, or judgment issued in accordance with applicable State or local law by a court of competent jurisdiction. This term does not include any payment or transfer of property or its value by an individual to his or her spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses. (See instead 5 U.S.C. 8345(j) and 5 CFR part 831, subpart Q.)

(f) *Legal process* means any writ, order, summons, or other similar process in the nature of garnishment, which may include an attachment, writ of execution, or court ordered wage assignment, which—

(1) Is issued by:

(i) A court of competent jurisdiction, including Indian tribal courts, within any State, territory, or possession of the United States, or the District of Columbia;

(ii) A court of competent jurisdiction in any foreign country with which the United States has entered into an agreement that requires the United States to honor such process; or

(iii) An authorized official pursuant to an order of a court of competent jurisdiction or pursuant to State or local law; or

(iv) A State agency authorized to issue income withholding notices pursuant to State or local law or pursuant to the requirements of section 666(b) to title 42 of the United States Code; and

(2) Is directed to, and the purpose of which is to compel, a governmental entity, to make a payment from moneys otherwise payable to an individual, to another party to satisfy a legal obligation of the individual to provide child support and/or make alimony payments.

(g) *Legal obligation* means an obligation to pay alimony and/or child support that is enforceable under appropriate State or local law. A legal obligation may include current as well as past due alimony and/or child support debts depending on the law in the jurisdiction from which the legal process was issued.

(h) *Obligor* means an individual having a legal obligation to pay alimony and/or child support.

(i) *Remuneration for employment* means compensation paid or payable for personal services, whether such compensation is denominated as wages, salary, commission, bonus, pay, or otherwise, and includes, but is not limited to, those items set forth in § 581.103.

(j) *Party* means the person or persons to whom alimony and/or child support payments should be made, or, in the case of an agency established by State or local law, the agency which has been assigned, by law or by agreement, the

right to receive such payment or payments.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26279, June 7, 1983; 55 FR 1355, Jan. 16, 1990]

§ 581.103 Moneys which are subject to garnishment.

(a) For the personal service of a civilian employee obligor:

(1) Saved pay;
(2) Retained pay;
(3) Night differentials;
(4) Sunday and holiday premium pay;

(5) Overtime pay;
(6) Standby duty pay, administratively uncontrollable overtime pay, and availability pay;

(7) Environmental differentials;
(8) Hazardous duty pay;
(9) Tropical differentials;
(10) Recruitment incentives, recruitment and relocation bonuses and retention allowances;

(11) Equalization allowance;
(12) Any payment in consideration of accrued leave;

(13) Severance pay;
(14) Sick pay;
(15) Physicians comparability allowances;

(16) Special pay for physicians and dentists;

(17) Amounts paid pursuant to a personal services contract where the contractor recipient performed the services and received the payments in the capacity as a Federal employee;

(18) Merit pay;
(19) Incentive pay;
(20) Cash awards, including performance-based cash awards;

(21) Agency and Presidential incentive awards (except where such award is for making a suggestion);

(22) Senior Executive Service rank and performance awards;

(23) Moneys due for the services of a deceased employee obligor, including:

(i) Overtime or premium pay;
(ii) Amounts due as refunds of pay deductions for United States savings bonds;

(iii) Payments for accumulated and current accrued annual or vacation leave as provided for in section 5581 of title 5 of the United States Code;

(iv) Retroactive pay as provided for in section 5344(b)(2) of title 5 of the United States Code; and

(v) Amounts of checks drawn for moneys due which were not delivered by the governmental entity to the employee obligor prior to the employee obligor's death or which were not negotiated and returned to the governmental entity because of the death of the employee obligor, except those moneys due that are listed in § 581.104(i);

(24) Locality-based comparability payments or continued rate adjustments;

(25) Staffing differentials;

(26) Supervisory differentials;

(27) Special pay adjustments for law enforcement officers in selected cities; and

(28) Advances in pay.

(b) For the personal service of an obligor in the uniformed services of the United States:

(1) Basic pay (including service academy cadet and midshipmen pay);

(2) Special pay (including enlistment and re-enlistment bonuses);

(3) Lump sum reserve bonus;

(4) Continuation pay for physicians and dentists;

(5) Special pay for physicians, dentists, optometrists, and veterinarians;

(6) Incentive pay;

(7) Variable incentive pay;

(8) Inactive duty training pay;

(9) Administrative duty pay;

(10) Academy official pay (other than personal money allowances);

(11) Any payments made in consideration of accrued leave (basic pay portion only);

(12) Readjustment pay;

(13) Disability retired pay;

(14) Severance pay (including disability severance pay); and

(15) Cash awards (NOAA Corps).

(c) For obligors generally:

(1) Periodic benefits, including a periodic benefit as defined in section 428(h)(3) of title 42 of the United States Code, title II of the Social Security Act, to include a benefit payable in a lump sum if it is commutation of, or a substitute for, periodic payments; or other payments to these individuals under the programs established by subchapter II of chapter 7 of title 42 of the

United States Code (Social Security Act) and by chapter 9 of title 45 of the United States Code (Railroad Retirement Act) or any other system, plan, or fund established by the United States (as defined in section 662(a) of title 42 of the United States Code) which provides for the payment of:

(i) Pensions;

(ii) Retirement benefits;

(iii) Retired/retainer pay;

(iv) Annuities; and

(v) Dependents' or survivors' benefits when payable to the obligor;

(2) Refunds of retirement contributions where an application has been filed;

(3) Employee contributions and Government contributions to the obligor's Thrift Savings Fund account in accordance with section 8437(e) of title 5 of the United States Code;

(4) Amounts received under any Federal program for compensation for work injuries; and

(5) Benefits received under the Longshoremen's and Harbor Workers' Compensation Act.

(6) *Exceptions.* Remuneration would not include:

(i) Any payment as compensation for death, including any lump sum death benefit under any Federal program;

(ii) Any payment under any Federal program established to provide "black lung" benefits;

(iii) Any payment by the Department of Veterans Affairs as pension; or

(iv) Any payment by the Department of Veterans Affairs as compensation for a service-connected disability or death, except any compensation paid by the Department of Veterans Affairs to a former member of the Armed Forces where the former member has waived either the entire amount or a portion of his/her retired/retainer pay in order to receive such compensation. In this case, only that part of the Department of Veterans Affairs payment that is in lieu of the waived retired/retainer pay is subject to garnishment.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26279, June 7, 1983; 55 FR 1356, Jan. 16, 1990; 56 FR 36723, Aug. 1, 1991; 58 FR 35846, July 2, 1993; 59 FR 66154, Dec. 23, 1994; 61 FR 3544, Feb. 1, 1996]